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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 LAM RESEARCH CORPORATION,

12 Plaintiff,

13 v.

14 SUBHASH DESHMUKH,

15 Defendant.

Case No. C04-5435FDB

AMENDED ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS

16 Defendant moves for dismissal of this cause of action and asks the Court to dissolve the
17 injunction arguing that Defendant has found his copy of the signed employment agreement, also
18 signed by a Lam witness, which agreement provides that California law governs disputes between
19 Lam and its employees. Because California law governs the parties' agreement, and because
20 California has explicitly rejected the doctrine of "inevitable disclosure," Lam's claim against
21 Defendant must fail and the preliminary injunction must be vacated.

22 In its Response, Plaintiff notes Defendant's deposition testimony where he said that he signed
23 all the documents and handed them back to Greg Stock, Lam's HR representative, and that he did
24 not keep a copy of anything that he signed, nor did he ask to keep a copy of what he had signed.
25 (Deshmukh Dep. Pp 85, 86, 88, 89, attached as Ex. A to Decl of Alexander A. Baehr.) Deshmukh

1 also so testified at the preliminary injunction hearing, that he returned the Agreement to the Lam
2 representative. Despite this testimony, continues Lam, Plaintiff now claims that he kept the original
3 signed agreement – not a copy. This is confirmed by an e-mail from Plaintiff’s counsel (Baehr Dec.
4 At Ex. B.) Moreover, a Lam human resources checklist indicates that Defendant did not turn in his
5 employment agreement. (*Id.*, Ex. C.)

6 Plaintiff argues that a fair inference from Defendant’s keeping the original was that he never
7 intended to be bound by the agreement’s terms while employed by Lam and that he now hopes to
8 reap the benefits of the application of California law. *See Pacific Cascade Corp. v. Nimmer*, 25 Wn.
9 App. 52, 555-56, 608 P.2d 266 (1980)(“It is essential to the formation of a contract that the parties
10 manifest to each other their mutual assent to the same bargain at the same time.”)

11 Additionally, Plaintiff argues that Defendant’s interlocutory appeal of the preliminary
12 injunction order divests this court of jurisdiction over the issues involved in the appeal. *Marrese v.*
13 *American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985) “The filing of a notice of
14 appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and
15 divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs*
16 *v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Nevertheless, a district court may
17 deny relief even if it or the moving party would be required to ask for a remand for the appellate
18 court to grant such relief. *See, e.g., Brown v. United States*, 976 F.2d 1104, 1110-11 (7th Cir.
19 1992)(district court has right to deny motion involving matter on appeal.) Defendant’s appeal, filed
20 on April 6, 2005, requests “dismissal of the lawsuit” and reversal of the preliminary injunction order.


21 Plaintiff also argues that the motion to dismiss is a disguised motion for reconsideration and
22 argues that for five separate reasons the motion should not be considered. Plaintiff also argues that
23 other rules cited by Defendant in support of dismissal are not applicable.

24 The Court having considered the parties’ submissions, concludes that Defendant’s motion to
25 dismiss must be denied. It does not appear that there was mutual assent to form the agreement at

1 issue here. Defendant indicates that he has the original document, and Lam's records show that the
2 signed agreement was never returned to it. This document cannot form the basis for a dismissal.
3 Moreover, the issues involved in the appeal of the preliminary injunction order are the subject of this
4 motion as well. ACCORDINGLY,

5 IT IS ORDERED: Defendant's Motion To Dismiss and Dissolve Injunction [Dkt. 196] is
6 DENIED.

7 DATED this 10th day of June, 2005.

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10 FRANKLIN D. BURGESS
11 UNITED STATES DISTRICT JUDGE
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